

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

AMERICAN MEDICAL RESPONSE, INC.^{1/}

Employer

and

Case 31-UC-296

INTERNATIONAL ASSOCIATION OF EMT'S
AND PARAMEDICS, NAGE-SEIU, AFL-CIO

Union/Petitioner

**REGIONAL DIRECTOR'S DECISION
AND
ORDER DISMISSING PETITION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{2/}

^{1/} The name of the Employer appears as corrected at the Hearing.

3. The International Association of EMTs and Paramedics (IAEP), a Division of the National Association of Government Employees (NAGE)-SEIU, AFL-CIO ("the Union/Petitioner") proposes to clarify the bargaining unit to include emergency medical technicians ("EMTs") and paramedics^{3/} in the critical care transport services.

4. Clarification of the bargaining unit is not warranted because the clarification petition is untimely.

On August 24, 1999, the Board certified the Union/Petitioner as the representative of the employees in the following bargaining unit^{4/}:

INCLUDED: All full-time and regular part-time emergency medical technicians ("EMTs") and paramedics employed within Los Angeles County (other than in the San Fernando Valley), including, but not limited to, the following station locations: 1210 E. 223rd St., #329, Carson, CA 90745; 704 W. Rosecrans Blvd., Compton, CA 90222; 12595 Crenshaw Blvd., Hawthorne, CA 90250; 1801 W. Pacific Coast Hwy., Suite B, Lomita, CA 90717; 620 W. 16th St., Long Beach, CA 90740; 4541 E. Anaheim Street, Long Beach, CA 90804; 4545 Annel Street, Long Beach, CA; 3734 W. Century Blvd., Bldg. 3, Unit 3, Inglewood, CA; 2636 South Street, Long Beach, CA 90805; 1328 N. Highland, Los Angeles, CA 90028; 5420 W. Jefferson Blvd., Los Angeles, CA 90016; 4040 Del Rey Avenue, Unit 12, Marina Del Rey, CA 90292; 2321 Torrance Blvd., Torrance, CA 90501; 1644 17th Street, Santa Monica, CA 90404; 2006 La Cienega Blvd., West Los Angeles, CA.

^{2/} The Employer, American Medical Response, Inc., is a Delaware corporation, with its principal offices located in Denver, Colorado. The Employer operates an ambulatory transport service in Los Angeles, California. Within the last twelve months, the Employer purchased and received goods valued in excess of \$50,000 directly from firms located outside the State of California. Therefore, the Employer meets the Board's discretionary, as well as the statutory, jurisdictional standard.

^{3/} Although the unit clarification petition states that the Union/Petitioner seeks to include EMTs and paramedics in the critical care transport ("CCT") division, it does not appear that the Employer employs paramedics in the CCT division. In fact, in the conclusion of its post-hearing brief, the Union/Petitioner only asserts that the unit should be clarified to include CCT EMTs. Furthermore, neither the post-hearing brief filed by the Employer nor the post-hearing brief filed by the Union/Petitioner addresses the issue of whether CCT paramedics should be included in the unit.

^{4/} The parties, including the Union/Petitioner, agreed to the unit description in the underlying representation case.

EXCLUDED: Employees already represented by labor organizations, EMTs and paramedics employed within the San Fernando Valley within Los Angeles County, nurses, critical care transport service employees, dispatchers, and all other employees, guards and supervisors as defined in the Act.

As noted above, the Union/Petitioner filed the Unit Clarification Petition on July 31, 2000, seeking to clarify the unit to include emergency medical technicians ("EMTs") and paramedics in the critical care transport services ("CCT"). There are about 1000 to 1300 employees in the bargaining unit and there are about 50 to 60 critical care transport employees.

The Employer is in the ambulance transportation business. The Employer employs EMTs, paramedics, nurses and respiratory therapists. The State of California and the counties in which the Employer operates establish the scope of practice for the each of these classifications, including the EMTs. The scope of practice defines the duties that the employees in each of these job classifications can perform.

The Employer operates basic life support ("BLS") transports, advanced life support ("ALS") transports and critical care ("CCT") transports. The BLS transports usually involve the movement of stable and non-medicated patients from a hospital to another facility of lesser care or to a residence. There usually are two EMTs on BLS transports and, when necessary, a paramedic. The ALS transports involve the movement of stable patients who are medicated or have procedures in progress that are within the scope of practice of a paramedic. The ALS crews contain one EMT and one paramedic. If the transport involves a "911" call, then a fire department paramedic first stabilizes the patient, who is then transported to a nearby hospital by a BLS unit. If the transport requires advanced life support, a paramedic joins the EMT in the back

with the patient. When a paramedic is present on either a BLS or an ALS transport, the EMT assists the paramedic.

The CCT runs involve the movement of patients who are in more critical condition and who require the administration of medication or the use of skills that are beyond the scope of practice of paramedics. The patients on a CCT run may require a cardiac monitor, a ventilator, a pulse ox machine, and/or an intravenous pump for medication. The CCT crews consist of two EMTs and either a nurse or a respiratory therapist. The EMTs on the CCT transports either drive or work in the back with the nurse or respiratory therapist, assisting with patient care and comfort. Generally, a Type II, van-style, ambulance is used for BLS runs and a larger, modular, ambulance is used for the CCT runs, so that there is room for more equipment and to facilitate the provision of medical air.

There are occasions when the Employer will dispatch a CCT unit to respond to a 911 call or to run a BLS transport. Furthermore, there are occasions when a BLS unit may pick up a nurse to handle a CCT call. Also, when there is no nurse or respiratory therapist available, the Employer will operate the CCT unit as a BLS unit. In addition, when CCT employees work overtime, they may be assigned to work a BLS or ALS unit and when BLS or ALS EMTs work overtime, they may be assigned to work on a CCT unit.

The EMTs are certified by the State and are licensed by the County. The Employer provides some additional training to the EMTs who are assigned to CCT runs. This training consists primarily of on-the-job training. Under a newly implemented program, CCT EMTs who complete a study book, as verified by a nurse, receive additional pay. The EMTs earn between \$21,000 and \$33,000/year and the CCT EMTs

earn a “skills bonus” of an additional \$3,000/year after they complete the additional training. Although the Employer prefers to hire CCT EMTs who have had some experience, it does hire CCT EMTs direct from EMT school.

The EMTs on the BLS and the CCT units wear similar uniforms and receive the same benefits. The BLS and ALS units work either 9-hour, 12-hour, or 24-hour shifts. The CCT units work either 12-hour or 24-hour shifts. The EMTs assigned to work CCT report to Pat Tomlin, the nurse manager/operations manager for the critical care transport division. The BLS and ALS EMTs report to field supervisors.

In early 2000, the Employer and the Union/Petitioner negotiated a collective-bargaining agreement. Agreement was reached in May 2000.^{5/} Section 1.01 of that Agreement sets forth the scope of the agreement as including “all regular full time and part time Emergency Medical Technicians and paramedics, employed by the employer at all employer facilities within Los Angeles and Orange Counties (excluding work currently performed in the area managed by Glendale Operations)” and as excluding “all other employees, supervisors, field employees when working in the capacity of a supervisor or associate supervisors, Critical Care Transport employees, guards, and other employees as defined by the Act.” Thus, the negotiated collective-bargaining agreement, consistent with the Certification, specifically excludes critical care transport employees from the unit.

^{5/} The copy of the agreement contained in the record is not signed. Although it is undisputed that the collective bargaining agreement introduced into the record is the agreement reached by the parties, it is unclear from the record whether or not the agreement has been executed. The Employer’s director of operations testified that the agreement was signed in May 2000 and the Union/Petitioner states in its post-hearing brief that the agreement was executed in May 2000. However, the Employer’s vice-president of human resources, safety and risk testified that although the agreement has been implemented, it has not yet been executed. Further, in its post-hearing brief, the Employer states the agreement has not yet been signed.

Although I agree with the Union/Petitioner that the CCT EMTs share a significant community of interest with the EMTs in the bargaining unit, I am compelled to dismiss the unit clarification petition as untimely.

The Board has long held that a unit clarification petition filed during the term of a collective bargaining agreement which specifically deals with the disputed classification will be dismissed if the party filing the petition did not reserve its right to file the unit clarification petition during the course of bargaining. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). As the Board noted in *Edison Sault Electric Co.*, 313 NLRB 753 (1994), "to permit clarification during the course of a contract would mean that one of the parties would be able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition." In *Edison Sault Electric*, the Board extended the *Wallace-Murray* rationale to cases where a party files a unit clarification petition prior to signing the contract, but after negotiations have ended and the parties have agreed to a contract.^{6/}

In the instant case, the agreement specifically excludes critical care transport employees. The only evidence that the Union/Petitioner even attempted to include the CCT EMTs in the unit during negotiations is the testimony of the Union's negotiator that the Union proposed a unit that included all EMTs. However, as the Union's negotiator conceded, its proposal was unsuccessful and the Union/Petitioner agreed to the unit description that specifically excludes critical care transport employees. There is no evidence that the Union/Petitioner reserved its right during the

^{6/} Thus, a resolution of the question of whether or not the agreement between the Employer and the Union/Petitioner has been executed is not necessary.

course of bargaining to file for clarification of the unit placement of the CCT EMTs after the agreement was negotiated.

Moreover, the Union/Petitioner has not introduced any evidence that there has been a recent and significant change with respect to the CCT EMT classification.^{7/} Rather, the Union/Petitioner asserts that it filed this unit clarification petition because it now knows that CCT EMTs periodically work on BLS and ALS transports and that BLS EMTs periodically work on CCT transports. The record does not establish that this interchange of employees is new.

The primary case cited by the Union/Petitioner in support of its position, *The Sun*, 329 NLRB No. 74 (September 30, 1999), is distinguishable because that case involved a determination with respect to a bargaining unit defined by the work performed and the unit placement of a group of employees in *newly created* job classifications. The case herein does not involve a newly created job classification. Rather, it involves a job classification that was in existence when the parties reached agreement on the collective-bargaining agreement, which specifically excludes critical care transport employees from the bargaining unit. In addition, the CCT EMT job classification was in existence at the time of the pre-election hearing when the parties agreed to the exclusion of the critical care transport employees from the appropriate unit.^{8/}

^{7/} The only evidence of changes concerning the CCT EMT classification involves the recent institution of some additional training for CCT EMTs and a very recent plan to pay a premium to those CCT EMTs who complete a workbook and have their skills verified by a nurse. These changes do not strengthen the Union/Petitioner's position that the CCT EMTs must be included in the unit with the other EMTs.

^{8/} See, *Premier Living Center*, 331 NLRB No. 9 ((May 15, 2000), holding that an employer was estopped from seeking clarification of a bargaining unit via a post-election unit clarification petition following the employer's voluntary stipulation to the inclusion of the disputed classification in the unit, in the absence of new and previously undiscovered evidence.

Accordingly, clarification of the bargaining unit is not warranted.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 4, 2000.

DATED at Los Angeles, California this 20th day of September, 2000.

/s/ James J. McDermott

James J. McDermott, Regional Director
National Labor Relations Board
Region 31
Olympic Center
11150 West Olympic Boulevard, Suite 700
Los Angeles, CA 90064-1824

385 7533 2020
385 7533 2060
385/7533/2080